

**U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)**

D George Sweigert, Plaintiff

v.

Jason Goodman, Defendant

CIVIL CASE #: 1:18-CV-08653-VEC

JUDGE VALERIE E. CAPRONI

MAGISTRATE STEWART D. AARON

**PLAINTIFF'S LETTER MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

MAY IT PLEASE THE COURT:

1. Plaintiff seeks the leave of this Court to amend the Second Amended Complaint (ECF Doc. no. 88 [9/10/2019] aka "Second Amended Complaint [SAC]) as this Court "should freely give leave when justice so requires." Fed. R. Civ. P. (15(a)(2) ("Rule 15"). Under this liberal standard, a motion to amend should only be denied if the moving party has unduly delayed or acted in bad faith, the opposing party will be unfairly prejudiced if leave is granted, or the proposed amendment is futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007).has filed the following document:

2. "Where a scheduling order has been entered, the lenient standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must be balanced against the requirement under Rule 16(b) that the Court's scheduling order 'shall not be modified except upon a showing of good cause.' Fed. R. Civ. P. (15(a), 16(b))." *Grochowski v. Phoenix Const.*, 318 F.3d 80, 86 (2d Cir. 2003). The Court should not that by ORDER of the magistrate judge (ECF Doc. 130 [12/16/2019]) discovery has been adjourned by the Court until further notice.

3. Plaintiff should be granted leave to clarify the factual basis as to claims related to Negligent Infliction of Emotional Distress (**N.I.E.D.**) and Intentional Infliction of Emotional Distress (**I.I.E.D.**) as they are presently awkwardly stated and blended into one section of the **SAC (#88), para. 111**. Such an **N.I.E.D./I.I.E.D.** amendment would not add any new claims, rather it would clarify the existing SAC (# 88) into a more readable flowing narrative in chronological order. See “ IV. NEGLIGENCE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS”, para. 111 (SAC, #88).

4. Further, an amended complaint will allow the Plaintiff to align allegations directed at putative defendant Marcus Conte of Brooklyn, New York with new allegations against Defendant Goodman – namely two causes for action: (a) CIVIL CONSPIRACY and (b) MALICIOUS PROSECUTION. As the Court will observe in the PROPOSED COMPLAINT AGAINST MARCUS CONTE (undocketed at this writing) newly discovered logical connections and relationships link Def. Goodman to putative defendant Conte. This supports the proposed civil conspiracy claim against Goodman. Both, Conte and Goodman, have contacted the Federal Bureau of Investigation to initiate criminal investigations against the undersigned. This supports the proposed malicious prosecution claim against Goodman. These additional allegations arise from research conducted on putative defendant Marcus Conte.

5. See generally *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993) (in determining what constitutes prejudice, court considers whether assertion of new claim would, inter alia, (1) require opponent to expend significant additional resources or (2) significantly delay resolution of dispute).

6. Defendant faces no undue prejudice if Plaintiff is granted leave to amend. It cannot be said the Plaintiff's clarification of his claims and reorganization of facts would require the

Defendant to expend any more resources, as discovery has barely begun and has been adjourned. In fact, Plaintiff's new Amended Complaint will streamline discovery and depositions by providing clear and organized allegations that clarify what occurred and which specific non-party witnesses were involved. Plaintiff's proposed amendments, therefore, arise from the same facts and transactions pled in the SAC (# 88) and are not prejudicial. *Monahan v. New York City Department of Corrections*, 214 F.3d 275 (2d Cir. 2000) at 284.

7. Moreover, the procedural posture of this case weighs against finding any undue prejudice: discovery is not complete, Defendant has not moved for summary judgment, and there is no summary judgment briefing schedule. *Scott v. Chipotle Mexican Grill, Inc.* 300 F.R.D. 193, 200 (S.D.N.Y. 2014) ("A court is more likely to find an amendment prejudicial if discovery has closed").

CONCLUSION

8. Based on the foregoing, it is respectfully requested that the Court grant Plaintiff's leave to file an Amended Complaint that will (1) strengthen the existing pleadings and clarifying their claims, and (2) adding new allegations of Civil Conspiracy and Malicious Prosecution. Absent narrowly construed, aggravating circumstances that would materially prejudice a party affected by an amended pleading, leave to amend should be granted.

9. I hereby certify that these pleadings are truthful and accurate (to the best of my knowledge) and are not submitted for the purposes of oppression of the Defendant.

**D. G. SWEIGERT, C/O
GENERAL DELIVERY
ROUGH AND READY, CA 95975
Spoliation-notice@mailbox.org**

D. G. Sweet
12.24.19

CERTIFICATE OF SERVICE

A true copy of this letter motion has been sent via First Class mail to:

**Jason Goodman, CEO
Multi-media Design Systems, Inc.
252 7th Avenue, Apart. #6S
New York, NY 10001**

**PRO SE INTAKE, Room 200
U.S. District Court
500 Pearl Street
New York, New York 10007-1312**

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Signed this ____ day of December 2019.

**D. G. SWEIGERT, C/O
GENERAL DELIVERY
ROUGH AND READY, CA 95975
Spoliation-notice@mailbox.org**

D. S. J.

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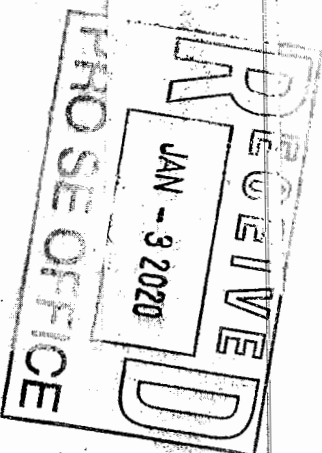
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GENERAL DELIVERY
ROUGH AND READY, CA 95975
Spoilation-notice@mailbox.org

PRO SE INTAKE, Room 200
U.S. District Court
500 Pearl Street
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